

**SENATE . . . . . No. 1609****The Commonwealth of Massachusetts**

PRESENTED BY:

**Harriette L. Chandler***To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act requiring tenant protections in foreclosed properties.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Ms. Chandler	First Worcester
Elizabeth A. Malia	11th Suffolk
Patricia D. Jehlen	Second Middlesex
Martha M. Walz	8th Suffolk
Marc R. Pacheco	First Plymouth and Bristol
Denise Provost	27th Middlesex
James B. Eldridge	Middlesex and Worcester
Michael W. Morrissey	Norfolk and Plymouth
Bill Bowles	2nd Bristol
Jennifer L. Flanagan	Worcester and Middlesex
Sonia Chang-Díaz	Second Suffolk
Susan C. Fargo	Third Middlesex
Timothy J. Toomey, Jr.	26th Middlesex
Thomas M. McGee	Third Essex and Middlesex
Robert F. Fennell	10th Essex
Gale D. Candaras	First Hampden and Hampshire
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Karen E. Spilka	Second Middlesex and Norfolk
Bruce E. Tarr	First Essex and Middlesex
Thomas P. Kennedy	Second Plymouth and Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S02664 OF 2007-2008.]

## **The Commonwealth of Massachusetts**

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**In the Year Two Thousand and Nine**

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### **AN ACT REQUIRING TENANT PROTECTIONS IN FORECLOSED PROPERTIES.**

*Whereas*, The deferred operation for this act would tend to defeat its purpose, which is forthwith to protect citizens of the Commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

**SECTION 1.** The general laws are hereby amended by adding after chapter 186, the following new chapter:-

Chapter 186A. Tenant protections in foreclosed properties

Section1. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

'Entity', a business organization, or any other kind of organization, including without limitation, a corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture, sole proprietorship, or any other category of organization, and any employee, agent, servant or other representative of such entity.

10 'Eviction', any action, without limitation, by a foreclosing owner of a housing accommodation  
11 which is intended to compel a tenant or former owner-occupant, now tenant at sufferance, to  
12 vacate or to be constructively evicted from such housing accommodation.

13 "Foreclosing owner", an entity that holds title, in any capacity, directly or indirectly, without  
14 limitation, whether in its own name, as trustee, or as beneficiary, to a housing accommodation  
15 that has been foreclosed upon, and either (1) held or owned a mortgage or other security interest  
16 in the housing accommodation at any point prior to the foreclosure of the housing  
17 accommodation or is the subsidiary, parent, trustee, or agent of, or otherwise is related to any  
18 entity which held or owned the mortgage or other security interest in the housing accommodation  
19 at any time prior to the foreclosure of the housing accommodation; or (2) is an institutional  
20 mortgagee that acquires or holds title to the housing accommodation within three years of the  
21 filing of a foreclosure deed on the housing accommodation.

22 'Foreclosure', a legal proceeding to terminate a mortgagor's interest in property, instituted by the  
23 mortgagee, either to gain title or to force a sale in order to satisfy the unpaid debt secured by the  
24 property, including, without limitation, foreclosure by action, by bill in equity, by entry and  
25 continuation of possession for three years, and by sale under the power of sale in a mortgage as  
26 described in chapter 244.

27 'Housing accommodation', any building or buildings, structure or structures, or part thereof or  
28 land appurtenant thereto, or any other real or personal property used, rented or offered for rent  
29 for living or dwelling purposes, together with all services connected with the use or occupancy of  
30 such property.

31 'Institutional mortgagee', any entity, or any entity which is the subsidiary, parent, trustee, or  
32 agent of, or otherwise related to any such entity, that holds or owns mortgages or other security  
33 interest in three or more housing accommodations, or acts as a mortgage servicer of three or  
34 more mortgages of housing accommodations.

35 'Just Cause', at least one of the following: (a) the tenant has failed to pay a reasonable rent to the  
36 foreclosing owner, but only if the foreclosing owner notified the tenant in writing of the amount  
37 of such reasonable rent and to whom it was to be paid; (b) the tenant has violated an obligation  
38 or covenant of the tenancy or occupancy other than the obligation to surrender possession upon  
39 proper notice and has failed to cure such violation within a reasonable time after having received  
40 written notice thereof from the foreclosing owner; (c) the tenant is committing or permitting to  
41 exist a nuisance in, or is causing substantial damage to, the unit, or is creating a substantial  
42 interference with the quiet enjoyment of other occupants; (d) the tenant is convicted of using or  
43 permitting the unit to be used for any illegal purpose; (e) the tenant who had a written lease or  
44 other rental agreement which terminated on or after the effective date of this chapter, has  
45 refused, after written request or demand by the foreclosing owner, to execute a written extension  
46 or renewal thereof for a further term of like duration and in such terms that are not inconsistent  
47 with the provisions of this chapter; (f) the tenant has refused the foreclosing owner reasonable  
48 access to the unit for the purpose of making necessary repairs or improvement required by the  
49 laws of the United States, the Commonwealth or any subdivision thereof, or for the purpose of  
50 inspection as permitted or required by agreement or by law or for the purpose of showing the  
51 rental housing unit to a prospective purchaser or mortgagee; (g) a binding purchase and sale  
52 contract with a purchaser who intends to occupy the housing accommodation as such purchaser's

principal residence and who is not a foreclosing owner, where such agreement requires the housing accommodation or some portion thereof to be conveyed vacant.

'Mortgagee', an entity to whom property is mortgaged; the mortgage creditor, or lender, including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent, servant, or employee of the mortgagee, or any successor in interest or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

'Mortgage Servicer', an entity which administers or at any point administered the mortgage, including, but not limited to, calculating principle and interest, collecting payments from the mortgagor acting as an escrow agent, and foreclosing in the event of a default.

'Reasonable Rent', for a tenant shall be the amount paid by such tenant immediately prior to the foreclosure as demonstrated by a lease, a rental agreement or other evidence of agreed-upon rent or rental payments. Reasonable rent for a former owner-occupant shall be the Fair Market Rent as established by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. c § 1437f(o), as it exists or may be amended, for a unit of comparable size in the area in which the housing accommodation is located.

'Tenant' any person or persons who at the time of foreclosure is entitled to occupy a housing accommodation pursuant to a written lease, tenancy at will, or tenancy at sufferance including a former owner-occupant who held legal title to a housing accommodation immediately prior to a foreclosure of such housing accommodation and who individually or with other legal occupants remains in possession of such housing accommodation after foreclosure. Any person who moves into the housing accommodation owned by the foreclosing owner following the filing of the

foreclosure deed without the express written permission of the owner shall not be considered a tenant under this statute

'Unit' or 'residential unit', the room or group of rooms within a housing accommodation which is used or intended for use as a residence by one household.

Section 2. Notwithstanding any other special or general law to the contrary, the foreclosing owner shall not evict a tenant or former owner-occupant except for just cause.

Section 3. Any foreclosing owner that evicts a tenant in violation of any provisions of this Act, or any ordinance or by-law adopted pursuant to this Act, shall be punished by a fine of not less than ten thousand dollars. Each eviction done in violation of this Act constitutes a separate offense.

The district and superior courts, and the housing courts in the Commonwealth, shall have jurisdiction over an action arising from any violation of this Act, or any ordinance, or by-law adopted pursuant to this Act, and shall have jurisdiction in equity to restrain any such violation.

It shall be a defense to eviction that the foreclosing owner attempted to evict a tenant in violation of any provision of this Act, or any ordinance or by-law adopted pursuant to this Act.

Section 4. This Act shall cease to have effect on December 31, 2013

**SECTION 2.** Section 13A of chapter 186 is hereby amended by inserting after the words “federal law” the following:--

and the foreclosing entity shall assume the rental subsidy contract with the rental subsidy administrator.